

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

KENNETH D. WIVELL and)	
TINA M. WIVELL, husband and wife,)	
)	
Plaintiff,)	
)	Case No. 6:12-cv-3457
v.)	
)	
WELLS FARGO BANK, N.A., <i>et al.</i>,)	
)	
Defendants.)	

**DEFENDANT KOZENY & MCCUBBIN, L.C.'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

COMES NOW Defendant Kozeny & McCubbin, L.C. ("**Kozeny**"), by and through its undersigned attorney of record, and for its Motion to Dismiss Plaintiff's Complaint (originally denominated as a "Petition"), states as follows:

1. Plaintiff's claims in this case appear in an eight count¹ Complaint for Wrongful For Wrongful Foreclosure, Fraudulent Misrepresentation, Violation of the Missouri Merchandising Practices Act, Civil Conspiracy, Negligence, Negligent Misrepresentation, Breach of Fiduciary Duty and Unjust Enrichment.

2. The claims made against Defendant Kozeny fail to state a claim upon which relief can be granted pursuant to FED.R.CIV.P. 12(b)(6) in that there are no factual allegations to support the causes of action asserted against Kozeny, and amendment of the pleadings will not produce any.

3. In support of its Motion, Kozeny adopts and incorporates herein by reference its Suggestions in Support of its Motion to Dismiss.

¹ Count eight of Plaintiffs' Complaint is mistakenly denominated as "Count X."

WHEREFORE, Defendant Kozeny & McCubbin, L.C. moves this Court to dismiss the claims in Plaintiff's Complaint against Kozeny with prejudice, for its cost and fees incurred herein, and for such other and further relief as this Court deems just and proper.

Respectfully Submitted,

KOZENY & McCUBBIN, L.C.

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Certificate of Service

I hereby certify that on the 24 day of October, 2012, a true and correct copy of the above was electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system:

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